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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE: FACEBOOK, INC. CONSUMER
PRIVACY USER PROFILE LITIGATION

MDL No. 2843
Case No. 18-md-02843-VC

This document relates to:

ALL ACTIONS

**PLAINTIFFS' RESPONSE TO NEW
MEXICO'S MOTION TO INTERVENE**

Judge: Hon. Vince Chhabria
Courtroom: 4, 17th Floor
Hearing Date: March 2, 2023
Hearing Time: 10:00 a.m.

The New Mexico Attorney General (“New Mexico”) asks to intervene to seek an order resolving whether the proposed settlement’s release may “inadvertently or otherwise release claims raised in the State’s parallel action” pending in New Mexico state court. Mot. to Intervene at 1, Feb. 28, 2023, ECF No. 1111.

Plaintiffs have no objection to New Mexico being heard on the issues it wishes to raise and note that this Court has the power to limit the scope of that intervention suitably. *See Fed. R. Civ. P. 24, Notes of Advisory Comm. – 1966 Amend.* (“An intervention of right under the amended rule may be subject to appropriate conditions or restrictions responsive among other things to the requirements of efficient conduct of the proceedings.”); *see also, e.g., WildEarth Guardians v. Jewell*, 320 F.R.D. 1, 5–6 (D.D.C. 2017) (putting limits on states’ intervention). Whether New Mexico’s desire to be heard requires formal intervention is an issue on which Plaintiffs take no position, but the Court could certainly hear from New Mexico without granting the Motion. *See Cotter v. Lyft, Inc.*, 193 F. Supp. 3d 1030, 1035 (N.D. Cal. 2016) (denying movants’ motion to intervene but permitting movants’ counsel to appear at the preliminary settlement approval hearing “to ensure a thorough assessment of the agreement’s fairness and adequacy”). Plaintiffs do, however, wish to flag two relevant considerations.

1. Insofar as New Mexico wants to intervene to get a *ruling* on how the release may affect its claims, this Court may not be the proper forum. The preclusive effect of a judgment is decided not by the forum that rendered the judgment, but by the forum presiding over the litigation that the judgment allegedly precludes. *See Ruiz v. Snohomish Cnty. Pub. Util. Dist. No. 1*, 824 F.3d 1161, 1168 (9th Cir. 2016) (“[T]o the extent that Defendants argue that the district court may predetermine the res judicata effect of its judgment, they are mistaken as a matter of law.”); *see also* Standing Order for Civil Cases Before Judge Vince Chhabria, ¶ 15. Thus, intervention may be unnecessary to protect New Mexico’s interests if another forum, not this one, must provide the ruling that New Mexico seeks.

2. Insofar as New Mexico wishes to be *heard* on how the settlement’s release provision may affect the Court’s preliminary or final approval of the settlement, it is not clear that

intervention is necessary. New Mexico may be heard on these matters both at the preliminary-approval hearing and at the final-approval stage. *See Noll v. eBay, Inc.*, 309 F.R.D. 593, 608 (N.D. Cal. 2015) (noting that state attorneys general may “raise any concerns” about a proposed settlement “during the normal course of the class action settlement procedures” (citation and quotation omitted)).

Dated: March 1, 2023

Respectfully submitted,

KELLER ROHRBACK L.L.P.

By: /s/ Derek W. Loeser
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ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(h)(3)

I, Lesley E. Weaver, attest that concurrence in the filing of this document has been obtained from the other signatory. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 1st day of March, 2023, at Oakland, California.

/s/ Lesley E. Weaver
Lesley E. Weaver

CERTIFICATE OF SERVICE

I, Julie Law, hereby certify that on March 1, 2023, I electronically filed the foregoing with the Clerk of the United States District Court for the Northern District of California using the CM/ECF system, which shall send electronic notification to all counsel of record.

/s/ Julie Law

Julie Law